

## Employment and Training Administration, Labor

## § 655.4

forth the WHD's investigation and enforcement actions.

### § 655.2 Territory of Guam.

Subpart A of this part does not apply to temporary employment in the Territory of Guam, and the Department of Labor (Department or DOL) does not certify to the USCIS of DHS the temporary employment of nonimmigrant foreign workers under H-2B visas, or enforce compliance with the provisions of the H-2B visa program provisions in the Territory of Guam. Pursuant to DHS regulations, 8 CFR 214.2(h)(6)(v) administration of the H-2B temporary labor certification program is performed by the Governor of Guam, or the Governor's designated representative.

### § 655.3 Special procedures.

(a) *Systematic process.* This subpart provides procedures for the processing of H-2B applications from employers for the certification of employment of nonimmigrant positions in non-agricultural employment.

(b) *Establishment of special procedures.* The Office of Foreign Labor Certification (OFLC) Administrator has the authority to establish or to devise, continue, revise, or revoke special procedures in the form of variances for the processing of certain H-2B applications when employers can demonstrate, upon written application to the OFLC Administrator, that special procedures are necessary. These include special procedures currently in effect for the handling of applications for tree planters and related reforestation workers, professional athletes, boilermakers coming to the U.S. on an emergency basis, and professional entertainers. Prior to making determinations under this paragraph (b), the OFLC Administrator may consult with employer and worker representatives.

### § 655.4 Definitions of terms used in this subpart.

For the purposes of this subpart:

*Act* means the Immigration and Nationality Act or INA, as amended, 8 U.S.C. 1101 *et seq.*

*Administrative Law Judge* means a person within the Department's Office of Administrative Law Judges appointed

pursuant to 5 U.S.C. 3105, or a panel of such persons designated by the Chief Administrative Law Judge from the Board of Alien Labor Certification Appeals established by part 656 of this chapter, which will hear and decide appeals as set forth in § 655.115.

*Administrator, Office of Foreign Labor Certification (OFLC)* means the primary official of the Office of Foreign Labor Certification, ETA, or the Administrator's designee.

*Administrator, Wage and Hour Division (WHD), Employment Standards Administration* means the primary official of the WHD, or the Administrator's designee.

*Agent* means a legal entity or person authorized to act on behalf of the employer for temporary non-agricultural labor certification purposes that is not itself an employer as defined in this subpart. The term "agent" specifically excludes associations or other organizations of employers.

*Applicant* means a lawful U.S. worker who is applying for a job opportunity for which an employer has filed an *Application for Temporary Employment Certification* (Form ETA 9142).

*Application for Temporary Employment Certification* means the Office of Management and Budget (OMB)-approved form submitted by an employer to secure a temporary nonagricultural labor certification determination from DOL. A complete submission of the *Application for Temporary Employment Certification* includes the form, all valid wage determinations as required by § 655.101(a)(1) and the U.S. worker recruitment report.

*Area of Intended Employment* means the geographic area within normal commuting distance of the place (worksites address) of intended employment of the job opportunity for which the certification is sought. There is no rigid measure of distance which constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., average commuting times, barriers to reaching the worksite, quality of regional transportation network, etc.). If the place of intended employment is within a Metropolitan Statistical Area (MSA), including a